163 US 678

TRANSCRIPT OF RECORD.

163-678

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1895.

No. 792.

RUFUS BUCK, LEWIS DAVIS, LUCKY DAVIS, SAM SAMPSON, AND MAOMA JULY, PLAINTIFFS IN ERROR,

vs.

THE UNITED STATES.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE WESTERN DISTRICT OF ARKANSAS.

FILED NOVEMBER 6, 1895.

(16082.)

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INDEX.

	Original.	Print.
Caption	a	1
Indictment	1	1
Arraignment and plea	2	1
Order granting applications for witnesses at public expense	2	1
Order granting applications for witnesses at public expense	3	2
Arraignment and plea of Lewis Davis	3	2
Order beginning trial	3	2
Verdict	4	3
Judgment and sentence of Rufus Buck	5	3
Lewis Davis	6	4
Lucky Davis	7	5
Sam Sampson	8	5
Maoma July	9	6
Order making bill of exceptions part of record, etc	10	7
Order staying execution, etc	10	7
Bill of exceptions	11	7
Evidence for the Government	11	7
Testimony of Henry Hassen	12	8
Rosetta Hassen	20	12
Hannah Edwards	28	17
Frank Raney	33	19
Joe Edwards	36	21
Jesse Jones	38	22
John Barnwell	40	22
Doog Berryhill	42	23

	Original.	Print.
Bill of exceptions—Continued.		
Evidence for defendants	44	24
Testimony of Rufus Buck	45	24
Evidence for the Government in rebuttal	52	28
Testimony of George McQuirty	52	28
Benton Callahan	54	29
Charge to the jury	57	30
Verdict	72	37
Judge's certificate	72	37
Assignment of errors	73	38
Petition for writ of error	77	40
Affidavit of poverty	78	41
Writ of error	79	41
Citation and acceptance of service	80	42
Clerk's certificate	82	43

a In the circuit court of the United States for the western district of Arkansas.

Pleas and proceedings before the Honorable Isaac C. Parker, judge of the district court of the United States for the western district of Arkansas, holding circuit court, in case of—

UNITED STATES
vs.
RUFUS BUCK ET AL. } Indictment for rape. No. 144.

1 *Indictment.*

United States of America, western district of Arkansas. In the circuit court, May term, A. D. 1895.

UNITED STATES
vs.
RUFUS BUCK AND LEWIS DAVIS AND LUCKEY Davis and Sam Sampson and Maoma July. } Rape.

The grand jurors of the United States of America, duly selected, empaneled, sworn, and charged to inquire in and for the body of the western district of Arkansas aforesaid, upon their oath present:

That Rufus Buck and Lewis Davis and Lucy Davis and Sam Sampson and Maoma July, on the 6 day of Aug., A. D. 1895, at the Creek Nation, in the Indian country, within the western district of Arkansas aforesaid, in and upon Rosetta Hassan, a white woman, and not an Indian, feloniously, forcibly, and violently an assault did make, and her, the said Rosetta Hassan, then and there, and against her will, forcibly, violently, and feloniously, did ravish and carnally know, contrary to the form of the statute in such case made and provided, and against the peace and dignity of the United States of America.

JAS. F. READ,
U. S. District Attorney, Western District of Arkansas.

(Endorsed on back:) No. 144. United States versus Rufus Buck and Lewis Davis and Luckey Davis and Sam Sampson and Maoma July. Rape. A true bill. E. J. Black, foreman. Witnesses: Rosetta Hassan, Henry Hassan, Dick Ryan, Orcutt, I. T.; Jesse Jones, deputy marshal, Ft. Smith, Ark.; John Barnwell, Doog Berryhill, Okmulgee, I. T.; Hannah Edwards, Orcutt, I. T.; Frank Ranney. Filed in open court Aug. 20, 1895. S. Wheeler, clerk. By I. M. Dodge, D. C.

2 *Record entries.*

In the circuit court of the United States for the western district of Arkansas, Aug. term, 1895, Tuesday morning, 8½ o'clock, Aug. 20, 1895.

Court met pursuant to adjournment. Present, the Hon. Isaac C. Parker, judge of the district court of the United States for the western district of Arkansas.

UNITED STATES
vs.
RUFUS BUCK, LUCKEY DAVIS, MAOMA JULY, and Sam Sampson. } Indictment for rape. No. 144.

On this day come the United States of America, by Jas. F. Read, esq., attorney for the western district of Arkansas, and come the said defendants, in custody of the marshal, and make known to the court that they are destitute of means and wholly unable to employ counsel, and ask the court to assign counsel to defend them in this cause; and the court, being fully advised in the premises, appointed Messrs. Cravens & Cravens, C. J. Frederick, and Barnes & Mellette counsel for the said defendants in this cause; whereupon said defendants, having jointly had hearing of said indictment, and it being demanded of them separately concerning said indictment above specified and charged upon them how they would acquit themselves thereof, they say, each for himself, that they are not guilty as charged in said indictment, and put themselves upon the country.

THURSDAY, *Aug. 22, 1895.*

UNITED STATES
vs.
SAM SAMPSON. } Indictment for rape. No. 144.

On this day come the said defendant, by his attorney, and files his application, verified upon oath, praying for witnesses in his behalf at the expense of the United States. Said application coming on to be heard, and the court, being fully advised in the premises, doth allow the same.

It is therefore ordered that the legal expense of procuring the testimony of Saml. J. Haynes, Martha Sampson, and Willie Haynes
3 in behalf of said defendant be paid by the United States, and that a subpœna be issued for them, returnable Sept. 2, 1895.

UNITED STATES
vs.
RUFUS BUCK AND MAOMA JULY. } Indictment for rape. No. 144.

On this day come the said defendants, by their attorney, and file their application, verified upon oath, praying for witnesses in their behalf at the expense of the United States. Said application coming on to be heard, and the court being fully advised in the premises, doth allow the same.

It is therefore ordered that the legal expense of procuring the testimony of Dave Pigeon, old man Cyrus, Dennis Cyrus, Annie Buck, and John Buck in behalf of said defendants be paid by the United States, and that a subpœna be issued for them returnable Sept. 2, 1895.

MONDAY, *Sept. 23, 1895.*

UNITED STATES
vs.
LEWIS DAVIS. } Indictment for rape. No. 144.

On this day come the United States of America, by Jas. F. Read, esq., attorney for the western district of Arkansas, and come the said defendant in custody of the marshal and by his attorney, and having had hear-

ing of said indictment, and it being demanded of him concerning said indictment above specified and charged upon him how he would acquit himself thereof, he says he is not guilty as charged in said indictment, and puts himself upon the country.

UNITED STATES
vs.
RUFUS BUCK, LEWIS DAVIS, JUCKEY DAVIS, Sam Sampson, and Maoma July.
} Indictment for rape. No. 144.

On this day come the United States of America, by Jas. F. Read, esq., attorney for the western district of Arkansas, and come the said defendants in custody of the marshal and by their attorneys, Ben Cravens, esq., and C. J. Frederick, esq.; and it appearing from the returns of the
4 marshal that said defendants have each been served with a duly certified copy of the indictment in this cause, and a full and complete list of the witnesses in this cause, and that they have also each been served with a full and complete list of the panel of petit jurors and alternates as selected and drawn by the jury commissioners for the present term of this court more than two entire days heretofore; and having heretofore had hearing of said indictment and each for himsel' pleaded not guilty thereto, it is, on motion of plaintiff by its attorney, ordered by the court that a jury come to try the issue joined. Whereupon, after counsel for both plaintiff and defendants had exercised in the presence of the defendants their full right of challenge under the law, the following jurors were selected for the trial of this cause, to wit: Wm. R. Brookshire, Wm. Boling, Carl J. Berry, Henry W. Chronister, Robt. L. Condren, Monti Baxter, Elisha C. Davis, John N. Ferguson, Jas. A. Freeling, Nathan A. Freeling, Wm. R. Owens, Wm. R. Lee, twelve good and qualified electors of the district aforesaid, duly selected, empaneled, and sworn to try the issue joined and a true verdict render according to the law and the evidence; and after hearing the evidence and receiving the charge of the court retired in charge of a sworn bailiff of this court to consider of their verdict, and after a short time returned into court the following verdict, to wit:

"We, the jury, find the defendants, Rufus Buck, Lewis Davis, Luckey Davis, Sam Sampson, and Maoma July, guilty of rape as charged in the within indictment."

(Signed) JOHN N. FERGUSON, *Foreman.*

On motion of defendants' counsel the jury was polled and each juror answered for himself that the verdict as read by the court was his verdict.

Whereupon by order of the court the jury was discharged from the further consideration of the case and said defendants were remanded to the custody of the marshal to await final sentence.

5 WEDNESDAY, *Sept. 25, 1895.*

UNITED STATES
vs.
RUFUS BUCK.
} Indictment for rape. No. 144.

On motion of Jas. F. Read, esq., attorney for the western district of Arkansas, the said defendant, Rufus Buck, was brought to the bar of this

court in custody of the marshal of said district, and it being demanded of him what he has to or can say why the sentence of the law upon the verdict of guilty heretofore returned against him by the jury on the 23rd day of Sept., 1895, shall not now be pronounced against him, he says he has nothing further or other to say than that he has heretofore said. Whereupon the premises being seen, and by the court well and sufficiently understood, it is considered by the court that the said Rufus Buck be deemed, taken, and adjudged guilty of the crime of rape; and it is ordered by the court that the said marshal of the district aforesaid cause the said Rufus Buck to be taken hence, and him, the said Rufus Buck, safely and securely keep from the date hereof until Thursday, the 31st day of October, A. D. 1895, and on that day, and between the hours of nine o'clock in the forenoon and five o'clock in the afternoon of said day, the said marshal cause the said Rufus Buck to be taken to some convenient place within this district, to be appointed by said marshal, and then and there, between the said hours of nine o'clock in the forenoon and five o'clock in the afternoon on Thursday, the said 31st day of October, in the year of our Lord one thousand eight hundred and ninety-five, cause the said Rufus Buck to be hanged by the neck until he is dead. And it is further considered by the court that the United States of America do have and recover all their costs in and about this prosecution laid out and expended, and that they have execution therefor.

And the clerk of this court is hereby required to furnish the marshal of this district with a duly certified copy of this judgment, sentence, and order, which shall be returned by said marshal with a full and true account of the execution of the same.

6 WEDNESDAY, *Sept. 25, 1895.*

UNITED STATES *vs.* LEWIS DAVIS. } Indictment for rape. No. 144.

On motion of Jas. F. Read, esq., attorney for the western district of Arkansas, the said defendant, Lewis Davis, was brought to the bar of this court, in custody of the marshal of said district, and it being demanded of him what he has to or can say why the sentence of the law upon the verdict of guilty heretofore returned against him by the jury on on the 23rd day of Sept., 1895, shall not now be pronounced against him, he says he has nothing further or other to say than he has heretofore said. Whereupon the premises being seen, and by the court well and sufficiently understood, it is considered by the court that the said Lewis Davis be deemed, taken, and adjudged guilty of the crime of rape, and it is ordered by the court that the said marshal of the district aforesaid cause the said Lewis Davis to be taken hence, and him, the said Lewis Davis, safely and securely keep, from the date hereof until Thursday, the 31st day of October, A. D. 1895, and on that day, and between the hours of nine o'clock in the forenoon and five o'clock in the afternoon of said day, the said marshal cause the said Lewis Davis to be taken to some convenient place within this district to be appointed by said marshal, and then and there, between the said hours of nine o'clock in the forenoon and five o'clock in the afternoon, on Thursday, the said 31st

day of October, in the year of our Lord one thousand eight hundred and ninety-five, cause the said Lewis Davis to be hanged by the neck until he is dead. And it is further considered by the court that the United States of America do have and recover all their costs in and about this prosecution laid out and expended, and that they have execution therefor.

And the clerk of this court is hereby required to furnish the marshal of this district with a duly certified copy of this judgment, sentence, and order, which shall be returned by said marshal with a full and true account of the execution of the same.

7 WEDNESDAY, *Sept. 25, 1895.*

UNITED STATES } Indictment for rape. No. 144.
v.
LUCKEY DAVIS. }

On motion of Jas. F. Read, esq., attorney for the western district of Arkansas, the said defendant, Luckey Davis, was brought to the bar of this court in custody of the marshal of said district and it being demanded of him what he has to or can say why the sentence of the law upon the verdict of guilty heretofore returned against him by the jury on the 23rd day of Sept., 1895, shall not now be pronounced against him, he says he has nothing further or other to say than he has heretofore said. Whereupon the premises being seen, and by the court well and sufficiently understood, it is considered by the court that the said Luckey Davis be deemed, taken, and adjudged guilty of the crime of rape, and it is ordered by the court that the said marshal of the district aforesaid cause the said Luckey Davis to be taken hence, and him, the said Luckey Davis, safely and securely keep from the date hereof until Thursday, the 31st day of October, A. D. 1895, and on that day, and between the hours of nine o'clock in the forenoon and five o'clock in the afternoon of said day, the said marshal cause the said Luckey Davis to be taken to some convenient place within this district, to be appointed by said marshal, and then and there between the said hours of nine o'clock in the forenoon and five o'clock in the afternoon on Thursday, the said 31st day of October, in the year of our Lord, one thousand eight hundred and ninety-five, cause the said Luckey Davis to be hanged by the neck until he is dead. And it is further considered by the court that the United States of America do have and recover all their costs in and about this prosecution laid out and expended, and that they have execution therefor.

And the clerk of this court is hereby required to furnish the marshal of this district with a duly certified copy of this judgment, sentence, and order, which shall be returned by said marshal with a full and true account of the execution of the same.

8 WEDNESDAY, *Sept. 25, 1895.*

UNITED STATES } Indictment for rape. No. 144.
vs.
SAM SAMPSON. }

On motion of Jas. F. Read, Esq., attorney for the western district of Arkansas, the said defendant, Sam Sampson, was brought to the bar of

this court in custody of the marshal of said district, and it being demanded of him what he has to or can say why the sentence of the law upon the verdict of guilty heretofore returned against him by the jury on the 23rd day of Sept., 1895, shall not now be pronounced against him, he says he has nothing further or other to say than he has heretofore said. Whereupon, the premises being seen and by the court well and sufficiently understood, it is considered by the court that the said Sam Sampson be deemed, taken, and adjudged guilty of the crime of rape, and it is ordered by the court that the said marshal of the district aforesaid cause the said Sam Sampson to be taken hence and him, the said Sam Sampson, safely and securely keep from the date hereof until Thursday, the 31st day *od* October, A. D. 1895, and on that day, and between the hours of nine o'clock in the forenoon and five o'clock in the afternoon of said day, the said marshal cause the said Sam Sampson to be taken to some convenient place within this district, to be appointed by said marshal, and then and there between the said hour of nine o'clock in the forenoon and five o'clock in the afternoon on Thursday, the said 31st day of October, in the year of our Lord one thousand eight hundred and ninety-five, cause the said Sam Sampson to be hanged by the neck until he is dead. And it is further considered by the court that the United States of America do have and recover all their costs in and about this prosecution laid out and expended, and that they have execution therefor.

And the clerk of this court is hereby required to furnish the marshal of this district with a duly certified copy of this judgment, sentence, and order, which shall be returned by said marshal, with a full and true account of the execution of the same.

9 WEDNESDAY, *Sept. 25, 1895.*

UNITED STATES *vs.* MAOMA JULY. } Indictment for rape. No. 144.

On motion of Jas. F. Read, esq., attorney for the western district of Arkansas, the said defendant, Maoma July, was brought to the bar of this court in custody of the marshal of said district, and it being demanded of him what he has to or can say why the sentence of the law upon the verdict of guilty heretofore returned against him by the jury on the 23rd day of Sept., 1895, shall not now be pronounced against him, he says he has nothing further or other to say than he has heretofore said. Whereupon, the premises being seen and by the court well and sufficiently understood, it is considered by the court that the said Maoma July be deemed, taken, and adjudged guilty of the crime of rape, and it is ordered by the court that the said marshal of the district aforesaid cause the said Maoma July to be taken hence and him, the said Maoma July, safely and securely keep from the date hereof unitl Thursday, the 31st day o*d* October, A. D. 1895, and on that day, and between the hours of nine o'clock in the forenoon and five o'clock in the afternoon of said day, the said marshal cause the said Maoma July to be taken to some convenient place within this district, to be appointed by said marshal, and then and there, between the said hour*s* of nine o'clock in the forenoon and

five o'clock in the afternoon, on Thursday, the said 31st day of October, in the year of our Lord one thousand eight hundred and ninety-five, cause the said Maoma July to be hanged by the neck until he is dead. And it is further considered by the court that the United States of America do have and recover all their costs in and about this prosecution laid out and expended, and that they have execution therefor.

And the clerk of this court is hereby required to furnish the marshal of this district with a duly certified copy of this judgment, sentence, and order, which shall be returned by said marshal, with a full and true account of the execution of the same.

10 SATURDAY, *Oct. 26, 1895.*

(Caption omitted.)

Come the defendants, by their attorneys, Thos. H. Boles, esq., and J. C. Byers, esq., and tender their bill of exceptions, and ask that the same be signed and made a part of the record in this cause, which is accordingly done. At the same time comes Jas. F. Read, esq., U. S. attorney, and objects to said bill of exceptions, because the same contains the charge of the court in full and the evidence in full as given at the trial, and the objection being by the court overruled, the district attorney at the time excepted to said ruling.

Defendants also file their assignment of errors and a petition for a writ of error to the Supreme Court of the United States; also at the same time file poverty affidavit, praying for an appeal in this cause at the expense of the United States.

MONDAY, *Oct. 28, 1895.*

(Caption omitted.)

Now comes the clerk and makes known to the court that a writ of error taking this case to the Suprem' Court of the United States has been issued.

It is therefore ordered that execution of sentence be stayed pending action of said Supreme Court.

11 *Bill of exceptions.*

The circuit court of the United States for the western district of Arkansas.
August term, A. D. 1895.

UNITED STATES
vs.
RUFUS BUCK, LEWIS DAVIS, LUCKEY DAVIS, SAM SAMPSON, and MAOMA JULY.

Be it remembered that on this the 23d day of September, 1895, the same being a day of the August term of the circuit court for the western district of Arkansas, came on to be heard the above-styled cause.

The United States, represented by the district attorney, introduced and examined the following-named witnesses, to wit: Henry Hassan,

Rosetta Hassan, Hannah Edwards, Frank Raney, Joe Edwards, Jesse Jones, John Barnwell, Doog Berryhill, who testified as follows:

12 SEPTEMBER, 23RD, A. D. 1895—10.15 o'clock.

HENRY HASSEN, having been duly sworn upon behalf of the Government, was examined in chief by J. B. McDonough, esq., the assistant district attorney, and testified as follows, to wit:

Question. What is your name?
Answer. Henry Hassen.
Q. Where do you live?
A. I live in the Creek Country, about 20 miles southwest of Sapulpa.
Q. Sapulpa is the terminus of the Frisco Road, is it not?
A. Yes, sir.
Q. You live 20 miles southwest of that?
A. They call it 20 miles.
Q. Are you a married man?
A. Yes, sir.
Q. You have a wife and no children?
A. I have two children.
Q. Was there anyone else living with you at that time?
A. My mother-in-law and brother-in-laws.
Q. Your mother-in-law's name is what?
A. Hannah Edwards.
Q. What are the names of your brother-in-laws?
A. Joe Edwards, Sam Edwards, Babe Edwards.
Q. Do you know these defendants, Rufus Buck, Lewis Davis, Lucky Davis, Sam Sampson, and Maomia July?
A. Yes, sir.
Q. They are charged here with committing rape upon Mrs. Hassen. I wish you would state all you know about it? Just begin at the beginning of it and tell all that occurred there?
A. They came to my house on the 5th of August, on Monday, at about 1 o'clock or half-past 1, and I was laying back out under an arbor, sleeping, and my wife was setting out there cutting up
13 plumbs for preserves, and Buck and Lucky Davis, as they call him—I didn't know his name then—the nigger there—rode up in front of the gate. This Sam Sampson and that Maomia July rode up back of the house, and Lewis Davis must have been standing at the end of the fence, for I did not see him when he first came up. [Witness points out and names each of the defendants.] I supposed when they came up there they were Indians hunting, and I went out and said, "Hello, boys; are you hunting?" and Buck said, "Yes; we want a drink of water." There was no water there, and I got a bucket and give it to my little brother-in-law and said to him: "You go and get a fresh bucket of water." He said, "All right," and as he started out I turned and walked back to where they were, and as I walked back Davis came riding up, and I knew him. I knew he was with the gang that was committing depredations through there, and I made up my mind they were going to hold me up. I knew that Lewis Davis had it in for me, and I thought they were going to hold me up. And I stood and studied for a minute what I should do, and I thought if ever I could get to the corner

of the house I would go there, and the door was at the other corner—the house is 16 feet long—and I thought if I could get to the corner before they threw down on me and get my Winchester before they shot at me, I would do it. I got to the corner of the house and broke to run for the door, and as I stepped up on the door step that Maomia July—that fellow setting there now with his head down—threw my Winchester in my face and said: "You son of a bitch, hold up!" They had been in the house and got my Winchester. That Sam Sampson threw a six-shooter down on me.

The COURT. Does he speak English?

The WITNESS. Yes, sir. This Sam Sampson threw a six-shooter down on me, and then they began coming towards me, and I began to back up, and Davis and Buck and the nigger there had got off their horses
14 at that time, and come in the gate, and they run towards me, and I backed up towards the corner of the house to keep them from getting behind me. Buck says, "We want your money." I says, "I have not got any money." He says, "You are a liar. Where is your money?" I says, "I have not got any." Buck says, "Do you know who I am?" I said I didn't. He says, "I am Cherokee Bill's brother, and I want your money," and he run at me and run his gun in my belly, and I swore I didn't have any money, and just then my mother-in-law spoke up and said, "We are poor people and haven't got any money," and the other two went in the house, and they searched the house, and they came out of the house and made another run at me and poked their guns in my belly and said, "You son of a bitch, where is that money?" I says, "I haven't got any." They went back in the house, and was looking around in the house, and the nigger was holding his gun on me, and I says, "I am sick; there is no use to make me hold my hands up in the sun. I have got nothing to fight with." He said, "You son of a bitch, stand there," and then he told me I could set down, and I set down. And Davis came around and said, "By God, we want our dinner."

Q. Which Davis?

A. Lewis Davis. My wife said, "We haven't got much to give you, boys." He said, "It don't make any difference; you will give it, anyway." While she was getting dinner they took a suit of clothes from me, and $5.95 or $4.95, I don't know which, out of my pocket, and a suit of clothes of my brother-in-law's and some baby clothes, baby's ring, and some dresses of my mother-in-law's and of my wife's, and a lot of handkerchiefs, and everything that was worth taking they took with them. They went in the house and set there, and my people said they played cards, but I don't know what they were doing in the
15 house, for I was under the arbor, and one of them was holding his Winchester on me while she was getting dinner for them. While I was setting there this Lewis says, "Do you know who I am?" He says, "Do you know Tom Root?" I said I didn't. He said, "You see him now, God damn you." The others come out and stood there while the nigger went in and eat his dinner. And Davis then said to my wife, "You will have to go with me." She says, "I don't want to go with you."

Q. Which Davis was that?

A. Lewis Davis, the one there with a yellow handkerchief around his neck. Before that he said to me, "Is that your wife?" I said it was. He says, "You are a nice-looking son of a bitch to have a woman." Then he says to her, "You will have to go with me." She began to cry and said, "I don't want to leave the children." And I couldn't do anything, for they could do whatever they wanted to with me as long as they had their guns on me. And my wife began to beg, and Davis went in the house, and then she began to plead with the nigger there, and asked him to get them not to take her;" and he said, "They are just bluffing; they don't want to take you; they are just doing it to see if you will get scared;" and then they came out, and he says, "Come and go with me," and she says, "I do not want to leave the children." And he says, "God damn the children; you can throw them in the creek." He says, "Come on or I will kill you," and my mother-in-law began to cry, and he threw a gun in her face and said, "You God damned old bitch, if you open your mouth again I will kill you." He wanted my wife to get on the horse, and she said, "I can't get on the horse, and I won't get on the horse;" and he said, "You will go a piece anyway." And Davis took her about 200 yards from the house, in the horse lot there by the barn, and I don't know what they done down there.

She said they raped her. I suppose they did. I could not swear
16 it, because I didn't see them do it. And Davis he staid down there probably ten minutes, and all four of the others set there on their horses with their Winchesters on me.

Q. While Davis was where your wife was?

A. Yes, sir; they set there with their Winchesters, and then Davis came back, and Buck went down there, and Davis came up and set on his horse, and then Buck came back, and this Sam Sampson went down, and then Sam Sampson came back, and Maomia July went down, and when he came back the nigger he went down, and then Buck and Sam Sampson rode out where they could look and stood there and laughed while the nigger was down there. And during the time I started to get off the bench I was on, to slide off the bench, and Buck shoved the Winchester back towards me, and he said, "You God damned son of a bitch, get back on that bench," and I did. After they turned my wife loose they rode up back and they said, "You get on that horse." I had a horse that was in the lot, or there by the house.

Q. Said that to whom?

A. To me. He said, "You son of a bitch, get on that horse and we will take you with us." I said, "There is no use of getting on the horse; it is sick." He said, "God damn you, get on anyway." I said, "There is no use; I can't do it;" and he said, "God damn you, put on your shoes," and I said, "I haven't got any." And he said, "You God damned son of a bitch, go barefooted;" and I said, "I can't do that," and I clumb over the fence, and just as I clumb over the fence this Dick Raney came up through the woods and my wife saw him, and she says to him, "Dick, for God's sake run, or they will kill you." She said that, and as soon as she said that part of them turned on their horses, and Maomia July said to me, "You march on," and I turned and marched

on, and in a little while they came marching Raney to me,
17 and they marched me up in the timber about a mile and a half or two miles from the house.

Q. Did they take Raney with you?

A. Yes, sir; Buck rode up and put his Winchester down in my breast, and said, "God damn you. I am going to kill you. Do you want to die?" I said, "No; I haven't got anything to die for." He said, "Well, God damn you, I will kill you anyway," and he stood and looked at me a minute, and he said, "No; I will kill this other son of a bitch first," and he rode over to Raney, and he said, "By God, I am going to kill you, anyway. Do you want to die?" and he said, "No; I haven't done anything to you," and then he said something in Creek to him, and this Mamoia July said something in Creek, and he said, "You go over to that big tree there," and they marched us over about a rod to a tree in the shade, and he threw his gun down on me, and he said, "You God damned son of a bitch, you have just got a minute. Do you want to pray?" I said, "No; if you are going to shoot, shoot." And they wanted me to dance then, he said, and I says, "I can't dance without somebody pats for me," and he said Raney could pat, and Raney said he couldn't pat, and he says, "Pat, anyway," and at that they commenced shooting at his feet, and he jumped *of* about so high [illustrating] from the ground and came down patting, and I went to dancing and danced a little bit, and then they said for me to pat and let Raney dance, and I patted a little and Raney danced. And then they says, "Can you jump?" Raney says, "No; one of my legs is shorter than the other, and I can't jump." And they says, "You jump in that hole of water there." There was a hole of water about ten or twelve feet wide there, and Raney he just jumped into the water off the bank, and then they turned around
to me and they says to me, "You jump," and I run up to
18 the bank and stopped, and they says, "You son of a bitch, jump," and I jumped and jumped clear across, and then turned around and jumped in, and they said, "You wrestle," and we went to wrestling, and I threw Raney down, and when we got up they said, "Now fight," and we went to fighting, and they went to shooting at Raney to make him hit me, and he didn't hit me, because he didn't have a chance. I kept him from hitting me, and they seen they could not make him hit me, and they said to me to run in and catch him, and then they said, "You God damned son of a bitch, kill him," and I says, "I will not kill him; if you want to shoot me you can shoot me, but I won't kill him." Then they says, "You can get up and go home." Buck says, "Now, I will give you a piece of advice," and threw his Winchester down on us, and says, "If you ever try to leave this timber to-night, you damned son of a bitch, we are going to lay right here and kill you, and if you get anybody to get after us we will kill you, and if you ever appear on the witness stand against us our friends will kill you." He said, "You hit the road, and don't you look back," and we hit the road, and run for about 50 yards, and then walked on up to the house, and my wife had got scared and had left home and went and hid in the cornfield, and I went to a neighbor's house about a quarter of a mile from my house, and my wife wasn't there, and I went back home and found her in the cornfield, and took her to Baxter's house.

Q. How long after that were they arrested?
A. They were arrested on Thursday morning.
Q. What day of the week were they at your house?
A. On the 5th day of August, on Monday.
Q. Last month, was it?
A. Yes, sir.
Q. And that was in the Creek Nation?
A. Yes, sir.
Q. Are you a white man?
A. Yes, sir.
19 Q. A United States citizen?
A. Yes, sir.
Q. Is your wife a white woman?
A. Yes, sir.
Q. She is a white woman, and not an Indian?
A. Yes, sir; not an Indian; no Indian blood in her.

Cross-examination by Mr. C. J. FREDERICK:

Q. Did they all speak English?
A. All but Sam Sampson; all he could say in English was "son of a bitch;" he had that down pat.
The COURT. I didn't understand one thing. Did more than one of the' go with your wife down behind the barn?
The WITNESS. Only one at a time. Davis marched her down with his gun first.
The COURT. He was the first one?
The WITNESS. Yes, sir; and Buck was the next one.
The COURT. Davis come back?
The WITNESS. Yes, sir; and then Buck went down.
The COURT. So there was one of them there at a time?
The WITNESS. Yes, sir; one of them there at a time.
The ASSISTANT DISTRICT ATTORNEY. They all went down?
The WITNESS. Yes, sir.
Witness excused.

20 ROSETTA HASSEN, having been duly sworn upon behalf of the Government, was examined in chief by J. B. McDonough, esq., the assistant district attorney, and testified as follows, to wit:

Question. What is your name?
Answer. Rosetta Hassen.
Q. Where do you live?
A. I live in the Creek Nation.
Q. You are the wife of Mr. Henry Hassen here, are you?
A. Yes, sir.
Q. You are a white woman, are you?
A. Yes, sir.
Q. Not an Indian?
A. No. sir.
Q. Where were you on the 5th of August last?
A. I was at home.

Q. Please state whether or not these defendants came to your house on that day, Rufus Buck, and others?

A. They were at our house.

Q. About what time did they come there?

A. I guess it was about 1 o'clock or half past 1 when they came.

Q. What were you doing when they came there?

A. I was sitting in the yard cutting plumbs.

Q. What was your husband doing?

A. Lying down on some saddle blankets.

Q. What did they say when they first came there?

A. They rode up and Mr. Hassen was asleep, and I waked him up and told him there was a couple of Indian men, to get up and see what they wanted, and he got up and went out there to where they were, and there was a couple of them asked for a drink of water.

Q. Do you know which ones asked for a drink of water?

A. I think it was Rufus Buck and Maomia July or Sampson—it
21 was Maomia—no, I believe it was the darky. It was the darky.

The COURT. Do you know his name?

The WITNESS. Lucky Davis, I believe they call him.

The COURT. Rufus Buck and Lucky Davis?

The WITNESS. Yes, sir; I think they were the ones that rode up in front of the gate.

The ASSISTANT DISTRICT ATTORNEY. Do you know where the others were at that time?

A. I don't know; but after they held Mr. Hassen up, I had an idea they got off in the front yard around the front door—there is no gate around there—and climb the fence, and had been in the house and got my husband's Winchester. This Sampson, I think it was, had his Winchester.

Q. You say they asked for water?

A. Yes, sir.

Q. Then what occurred next?

A. Mr. Hassen went to get them a drink, and there was no water there, and he called my little brother and give him the bucket and sent him after some water, and my husband saw Lewis Davis, and he had an idea he was going to hold him up—he knew he was with these outlaws—and he thought he would go around and get his Winchester and see if he could defend himself, and he met them at the door. I didn't see them, though; I was in the back yard yet.

Q. You needn't tell any part of it except what you saw yourself. Did they take anything from your husband and you?

A. Yes, sir; they took quite a number of little things; I don't know of everything; I have not examined anything at all. I have not felt like it. I know of one thing or two that they took. They took a relief corps badge of my mother's and a ring of my little girl's; and one thing
that Mr. Buck took that they say was on the saddle after he was
22 captured was a horseshoe padlock with brass on it that my husband bought in Guthrie, Oklohoma. I had it on a cage where I had some little rabbits.

Q. Was there any dinner prepared for them?

A. Yes, sir.

Q. Did they eat dinner?

A. Yes, sir.

Q. Did they all eat dinner at once?

A. No, sir; none of us had any dinner.

Q. I say, did the whole five of them eat dinner at once, or not?

A. No, sir; the four Indian fellows eat dinner—I suppose they are Indians, I don't know—and the darky staid out in the yard and guarded Mr. Hassen while the others eat, and then they came out and the darky went in and eat his dinner.

Q. After dinner what was done?

A. They ordered me to go out in the yard while they were eating, and I went out in the yard, and before dinner Davis told me he was going to take me away, and I begged him not to, and he came out in the yard, and he ordered me to go out and get on the horse, and I told him I could not ride the horse, and he give me my orders to go on out there, and I stood there and wouldn't go, and he cocked his Winchester and throwed it down in my face and told me to go or he would kill me, and I stopped for a moment and studied, and he told me to go on if I didn't want him to kill me, and I studied, and I thought, "Well, I had better go than to have him kill me." I knew if he killed me that he would kill the rest of them, and I thought it was better for me to go than to have him kill me and my mother and my husband and family; and so I walked out to the gate, and he ordered me to get on the horse, and I told him I could not ride the horse and I wouldn't, and the darky told him to go on and let me go, and he said I had to go a piece with him anyway; and
23 so Buck told him to go on then and hurry up about it so they could go on, and he held the gun down on me and told me to come on, and I went on ahead of him and he marched right behind me with the Winchester on me and marched me down back of the barn—around the corral back of the barn.

Q. Which one of the defendants was that?

A. Lewis Davis. The one there with the yellow handkerchief around his neck.

Q. What did he say to you when he marched you around there?

A. He laid his Winchester down and took his pistol in his hand. [Witness pauses.]

The COURT. Just go on and tell everything that occurred there. The law makes it necessary to tell it. It is a very delicate matter, of course, but you will have to tell about it.

The ASSISTANT DISTRICT ATTORNEY. Did he tell you what to do?

A. Yes, sir.

Q. What did he say?

A. He told me to lie down. [Witness cries.]

Q. Did you do so?

A. Yes, sir.

Q. After you had lain down did he have sexual intercourse with you?

A. Yes, sir.

Q. You say he laid his Winchester down and took his pistol in his hand?

A. Yes, sir. He told me to cover up my damned eyes and not to look at him. And after he got through with me, Buck he rode down there and served me the same way. And then one of the others come. I

believe—I don't know whether it was Sam Sampson or Maomia July, I won't say which—I don't remember—and then the other one come, and then the colored fellow come, and when he rode off I told him to never mind, that he would suffer for this; and he rode on and never paid any attention to me.

Q. Was each one armed as they came down?

24 A. Yes, sir; and the two last fellows that came shot their revolvers in the air as they rode down.

Q. As they rode down to where you were?

A. Yes, sir.

Q. Did you get up after Lewis Davis had done what he wanted to?

A. Yes, sir; and I was going to go to the house, and he wouldn't let me. He told me to stay there until they got ready for me to go.

The COURT. Told you to stay there until what?

The WITNESS. Until they got ready for me to go.

The ASSISTANT DISTRICT ATTORNEY. That was Lewis Davis told you that?

A. Yes, sir.

Q. Did Buck get down before Lewis Davis had gotten away from you or not?

A. He got down off his horse, and just as he got down off his horse Lewis Davis got in his saddle and rode off.

Q. You don't know whether it was Mamoia July or Sam Sampson that came next?

A. No, sir; I was so excited I don't remember. I know they all came, but I don't remember them apart.

Q. But the colored man was the last one?

A. Yes, sir.

Q. Each one of them accomplished his purpose upon you?

A. Yes, sir.

Q. Had sexual intercourse with you? Why did you submit to them?

A. I thought it would be better for me to submit to them than to be murdered and never have any chance to appear against them or anything.

Q. It was, you say, through fear of losing your life and the lives of your family that you submitted?

A. Yes, sir.

Q. Did each one of these defendants in coming down there and having sexual intercourse with you, each one of them penetrate your body with his private parts?

25 A. Yes, sir.

The COURT. Do you identify each of these defendants here as the parties?

The WITNESS. Yes, sir.

The COURT. Those five men there?

The WITNESS. Yes, sir.

The COURT. Are you able to name them?

The WITNESS. I believe I am. I know their names. I never saw them before they came to our house. I saw three of them——

The ASSISTANT DISTRICT ATTORNEY. Name as many as you can.

A. Rufus Buck, Lewis Davis, Sam Sampson, and Maomia July.

Q. Which one is Rufus Buck?

A. The heavy set fellow that sits there with his hand up to his mouth.

Q. Which one is Lewis Davis?
A. That one with his hat on his knee.
Q. Which one is Maomia July?
A. I don't know—I believe that one that sits out there on the last chair. I don't know them apart.
Q. Do you know which one is Lucky Davis?
A. That colored fellow there.
Q. You had seen some of them before, you started to say just now.
A. Yes, sir; I saw those two that sits over there and Lewis Davis before, but I never paid no attention to these fellows when I saw them before, and I didn't remember them when they were at our house. I knowed their faces.

The COURT. I understand you to state that you do know the faces of the whole five?

The WITNESS. Yes, sir; I know their faces, but I don't know their names.

26 The COURT. And you identify them as the men who did what you have described, each one of them?

The WITNESS. Yes, sir; by their faces.

Cross-examination by Mr. C. J. FREDERICK:

Q. Did each one of these five commit rape on you, all of the five?
A. Yes, sir.

By the COURT:

Q. I will ask you another question. What distance was it from where they had your husband and the other members of your family under guard to where they committed the outrage upon you?
A. I have an idea it was about as far as to the other end of the room there, or further.
Q. About the distance across this room, or a little further?
A. Yes, sir.

Redirect examination by the ASSISTANT DISTRICT ATTORNEY:

Q. Were you in sight of the house or out of sight of the house?
A. The barn was between the house and me. I was out of sight of the house.

The COURT. And they had your husband out in the yard?

27 The WITNESS. Yes, sir; he was setting on a work bench, and they were standing right there on their horses right at the fence, and one of them had his Winchester laying on the fence, and the others had their revolvers in their hands and Winchesters. I didn't pay any attention to them until they rode on to this young man that came up there and made him throw up.

The COURT. Did you get up after the last one was there?
The WITNESS. Yes, sir; and started to the house.
The COURT. Where was your husband at that time?
The WITNESS. He was in the yard. They were guarding him.
The COURT. Still guarding him?
The WITNESS. Yes, sir.
The COURT. With guns?
The WITNESS. Yes, sir.

Witness excused.

28 HANNAH EDWARDS, having been duly sworn upon behalf of the Government, was examined in chief by J. B. McDonough, esq., the assistant district attorney, and testified as follows, to wit:

Question. What is your name?

Answer. Hannah Edwards.

Q. Are you the mother of Mrs. Hassen, who was just on the witness stand here?

A. Yes, sir.

Q. Do you live with your son-in-law, Mr. Hassen?

A. Yes, sir.

Q. Were you at home on the day these defendants came to your house?

A. Yes, sir.

Q. I wish you would tell what occurred. Go on, in your own way, from the time you first knew of their coming there until they left, and just tell what occurred.

A. They come there on Monday morning, and they rode up and I didn't see them until two of them rode around at the front—the gate was on the north, and two rode around to the north, and the others were on the end of the house, and they got off and went in and got his gun, and they rode up first and wanted a drink of water; and he asked them what they wanted, and they said a drink of water, and he seen they were going to throw down on him, and he sets the bucket down and got the little boy to go after the water, and he started around to the front door where the door was in the end of the house—the front door was on that end—and he seen when he got around there they had his gun, and they threw the gun down on him, and he backed right around from that door right around to the end of the house, and had his hands up; right there at the end of the house was where I first saw him with his hands up.

29 They held him up right there at the end of the house, on the side that the gate is on, and they asked him to give them his money, and he told them he didn't have any money, and we all begged of them and told them we didn't have any money; that we were poor people; they had got all we had, went through the house and got everything, and they marched us around to the end where we were first setting cutting plum's to dry, and told us to take our seats there, and we set down, and then they ordered us to get dinner for them, and we went on and cooked dinner, and set it on the table in the front room for them, the best we could, still begging of them to let us be, that we had got their dinner, and we were doing all we could for them, and not to hurt us any way, or murder us, and they kept saying to me that they were going to take us all off and kill us, and I begged of them not to do this, and then they said they were going to take my daughter, and I still begged for them not to take her away from her children, and they said then that she could leave her children with their grandmother, and I says, "That won't do. That is wrong. Don't take her away from her children." And then they said they could take them and throw them in the water. I said, "That is wicked. Don't do that. That would be an awful wicked crime." And so after they got their dinner all over, and they said all this to us, Lewis Davis told her she had to go with him, and she begged of him not to take her away from her babies, and he did it, and

they marched her out the gate, and Lewis marched her out in front of him with his weapon on her, and told her she had to go. I commenced crying and begged for them not to take her, and they threw a gun down in my face, and told me, God damn me, if I didn't shut my mouth they would kill me, and I hushed and didn't say any more. And so they threw their guns down on my boy and marched him in, made him go back in.

Q. Was that Joe?

30 A. Yes, sir. They told him they would kill him if he left there. So, then, I stood there, and they took her off. He said he was going to have her go a piece with him, and so they took her off down behind the barn. I saw every one of them go to her. I didn't see them, of course, with her, but I saw every one of them go to her. Every one of them went to her, and I saw them come away from her.

Q. Were they armed when they were going down there?

A. Yes, sir; the last two that went towards her rode their horses around and threw their pistols in the air and shot.

Q. As they were going down to her?

A. Yes, sir; as they went to her.

Q. How many times did they shoot?

A. They shot twice, I believe, each one of them.

Q. Each one of them shot twice as they went down to where your daughter was?

A. Yes, sir, as well as I remember. Of course, I was scared awful bad.

Q. Your daughter was out of sight?

A. Yes, sir; out of sight of any of us there. We, of course, didn't see her. And after she came back—we saw her coming back—and this young man comes up and she goes out, and she says, "You run." She says, "Don't you come up," and he didn't know, and he came right on up. He said he seen they were there, and he was going to see what they were up to, and, of course, they made him throw up, and took his gun away from him, and then they marched my son-in-law a little ahead of him, up the road, and marched him right on behind my son-in-law, we supposed to kill them, and we staid there—all of us right there in the yard—and we seen their heads wasn't out of sight, and I kept begging for my daughter for us to run, and I could not get her to go, and directly I heard two fires, and I said then, "Come, and let's go, now."

31 Q. You needn't tell what you said. You heard somebody shoot?

A. Yes, sir.

Q. Had you ever seen any of the defendants before that?

A. I seen two of them.

Q. You don't know their names?

A. Lewis Davis—they call him—and Buck, and Sampson.

Q. Do you know them now?

A. I know two of them. I had seen their faces before.

Q. Do you know them now?

A. Yes, sir.

Q. Can you pick them out?

A. Yes, sir; Lewis Davis sets there now with his hat on his knee, and Buck there next to him.

Q. Do you know the others?

A. The colored man sets there by that white man, and the others there on the end was the persons that were there. I never shall forget their faces as long as I live.

The COURT. Do you recognize the whole five men as the five men who were there?

The WITNESS. Yes, sir; the five men.

The ASSISTANT DISTRICT ATTORNEY. Do you know the names of these two here?

A. Sampson, and Buck, Lewis Davis, and the others I can't speak their names. I have heard them, but I can't recollect their names now.

Q. Do you know which one is Sampson?

A. The one setting on the end there.

Q. And Lewis Davis is the one with his hat on his knee?

A. Yes, sir.

Q. And the one next to him is Buck, and the other one the colored man?

A. Yes, sir.

32 Q. You don't know the name of this one here?

A. This is Buck, or that one. I think this is Buck on this side of Lewis Davis.

Q. On which side of Lewis Davis?

A. Next to the colored man. Of course they are bleached a little now.

The COURT. You say they are bleached a little from what they were then.

The WITNESS. Yes, sir.

The COURT. They have been confined in jail since then.

Witness excused.

33 FRANK RANEY, having been duly sworn upon behalf of the Government, was examined in chief by J. B. McDonough, esq., the assistant district attorney, and testified as follows, to wit:

Question. Your name is Frank Raney, is it?

Answer. Yes, sir.

Q. You know Mr. Hassen, do you?

A. Yes, sir.

Q. Were you at his house on the day that these defendants were there?

A. Yes, sir.

Q. I wish you would tell *is* in your own way, Mr. Raney, what you know about what took place there.

A. As I came up there I saw Rufus Buck coming up from a correll there, and Mrs. Hassen was coming up around the corner next to where I was, and she said to stay away from the house—to go back or they would kill me.

Q. Where was Mrs. Hassen at that time?

A. She was coming up from the lot.

Q. Where were these defendants at that time?

A. One of them was right up ahead of me, and the others were up at the house, the other four.

Q. Which one of them was just up ahead of you?

A. Rufus Buck.

Q. Where was the others?

A. They were up around the door yard.

Q. Just go on and tell what occurred.

A. I went on up to the house then, and they throwed their guns down on me and told me to throw up my hands, and I throwed up; and Rufus Buck told me to turn my pockets, and I started to turn my pockets, and he said, "God damn you, hurry up there," and he struck me across the shoulder with the Winchester; and then Lewis Davis told me to let him see that gun, and I handed him the gun that I had, and he took the
34 gun, and then they marched I and Mr. Hassen out there in the woods and made us dance; and then they told us to jump a ditch there was, and I jumped about the middle of the ditch into the water, and Mr. Hassen jumped across it, and then they made him come back into the water where I was and made us wrestle.

Q. In the water?

A. Yes, sir; and then they told us to fight, and we told them we could not fight with any advantage in the water, and they said, "God damn you, get out there on the bank and fight," and we got out on the bank and began to fight, and fought awhile there and quit. And then they told us to go on back to the house, and, God damn us, if we left the woods that night God damned if they didn't kill every son of a bitch of us. And we started to the house, and then they called us back and told us they wanted to give us some good advice before we left. They said if we ever appeared in court against them, or ever got a mob to help hunt them or catch them, that if they didn't get to kill us some of their friends would.

Q. Had you ever seen either of the defendants before that?

A. I had seen Rufus Buck before that.

Q. Which one is Rufus Buck?

A. This gentleman sitting there—the third one from the end here.

Q. The one next to the colored man?

A. Yes, sir.

Q. Which are the others, if you know them?

A. This is Lewis Davis, the second one from the end here, and this Mamoia July on the end there, and this is Lucky Davis here at this end.

Q. The colored man?

A. Yes, sir; then that other man, I don't know him. Well, I didn't know Maomia July at that time.

Q. Do you know their faces, recognize them as the men who were there?

A. Yes, sir.

Q. You recognize them?

A. Yes, sir.

35 Q. As to their names, you knew before that only Rufus Buck?

A. I only knew Rufus Buck before that.

Q. You recognize these five men as the men who were there?

A. Yes, sir.

Q. That was in the Creek Nation was it?
A. Yes, sir.
Q. When?
A. The fifth day of August, on Monday.
Cross-examination waived. Witness excused.

36 JOE EDWARDS, having been duly sworn upon behalf of the Government, was examined in chief by J. B. McDonough, esq., the assistant district attorney, and testified as follows, to wit:

Question. What is your name?
Answer. Joel Edwards.
Q. Were you at Mr. Hassen's on the day that these defendants came there?
A. Yes, sir.
Q. Did you know any of them?
A. No, sir.
Q. Do you know them now?
A. Yes, sir.
Q. Please state what occurred there, in your own language, just what you saw and heard. When they first came what occurred? Where were you when they first came?
A. I was setting around there in the back yard.
Q. Go ahead now, and tell what occurred.
A. I was setting around in the back yard and they came up, and two of them went on the back side of the house and went in and got my brother-in-law's gun, and just as he was coming around they met him and made him throw up his hands, and he throwed up his hands and backed up against the corner of the house, and then they told him—made me go after a bucket of water, and give me so many minutes to get back in.
Q. I don't care to take you over everything that occurred. That can be done by the other side if they want to do so. Were you present when your sister, Mrs. Hassen, was taken away by one of them?
A. Yes, sir.
Q. Where did they take her, if you know?
A. They took her back down back of the barn.
Q. Where were you at the time that they were doing that, doing what they did down there?
A. I was there at the house.
37 Q. Where was Mr. Hassen?
A. He was there at the house.
Q. Whereabouts at the house was he?
A. He was there in the back yard, setting on an old bed that we had up.
Q. Can you point out the defendants, or name them? Do you know their names, the men who were there that day? Can you tell who they are here?
A. Yes, sir.
Q. Tell us?
A. That one there is Rufus Buck, and that one there is Lewis Davis. That is all the names I can name over.
Q. Which one is Rufus Buck?

A. The one setting right there close to the colored fellow.
Q. Which is Lewis Davis?
A. The one setting next to Rufus Buck.
Q. Which are the other three that were there that day?
A. Them two sitting right there and that one there.
Q. Did they all *give* go down to where your sister was?
A. Yes, sir.
Q. All together, or one at a time?
A. One at a time.

Cross-examination waived. Witness excused.

38 JESSE JONES, having been duly sworn upon behalf of the Government, was examined in chief by J. B. McDonough, esq., the assistant district attorney, and testified as follows, to wit:

Question. You are a deputy marshal, I believe?
Answer. Yes, sir.
Q. Did you arrest any of these defendants?
A. No, sir; I didn't arrest them.
Q. Did you have any conversation with any of them—with any one of them after he was arrested?
A. Yes, sir.
Q. Which one?
A. The one they call Lucky Davis; that colored man there.
Q. Did he make any statement to you about this rape?
A. Yes, sir.
Q. Please state what he said about it.
A. He said that those other defendants there with him raped the woman first, and that he went to her the last one.
The COURT. Which one said that, now?
The WITNESS. Lucky Davis, the colored man. He told me that he was the last one that went to the woman.
The ASSISTANT DISTRICT ATTORNEY. He said that he had accomplished his purpose upon her, did he?
A. Yes, sir.
Q. And that he was the last one?
A. Yes, sir.
Q. Anyone present with you when that statement was made?
A. Yes, sir.
39 Q. Who?
A. Mr. Barnwell and Doog Berryhill.
Q. They are here, are they?
A. Yes, sir.

Cross-examination waived. Witness excused.

40 JOHN BARNWELL, having been duly sworn upon behalf of the Government, was examined in chief by J. B. McDonough, esq., the assistant district attorney, and testified as follows, to wit:

Question. What is your name?
Answer. John Barnwell.
Q. Do you know Lucky Davis?

A. No, sir; I never knew him until after the arrest was made.

Q. Did he make any statement to you and Mr. Jones after his arrest as to this rape upon Mrs. Hassen?

A. Yes, sir.

Q. What did he say?

A. He said that they had raped her?

The COURT. Which one said that, now?

The COURT. Lucky Davis.

The ASSISTANT DISTRICT ATTORNEY. Which one is Lucky Davis?

A. That colored man there.

Mr. C. J. FREDERICK (of counsel for defendants). What "they?"

The ASSISTANT DISTRICT ATTORNEY. Who was it that raped her, did he say?

A. Mrs. Hassen.

Q. Who did the raping, I say?

A. All of them; all five.

Cross-examination by Mr. C. J. FREDERICK:

Q. Did he call any names?

41 A. Yes, sir; he called all the names that was implicated in the rape.

Redirect examination by the ASSISTANT DISTRICT ATTORNEY:

Q. Will you name them as he called them?

A. Davis, and Sampson, and Buck, and Lucky Davis.

Q. Was Maomia July mentioned?

A. Yes, sir.

Witness excused.

42 DOOG BERRYHILL, having been duly sworn upon behalf of the Government, was examined in chief by J. B. McDonough, esq., the assistant district attorney, and testified as follows, to wit:

Question. What is your name?

Answer. Doog Berryhill.

Q. Where do you live?

A. I live close to Okmulgee.

Q. Do you know Lucky Davis?

A. Yes, sir.

Q. Please state if he made any statement to you after his arrest with reference to this rape of Mrs. Hassen.

A. Yes, sir.

Q. Who was present at the time he made the statement?

A. Mr. Jones and John Barnwell.

Q. Which is Oucky Davis?

A. There he sits, there.

Q. The colored man?

A. Yes, sir.

Q. Please state what he said about this rape of Mrs. Hassen?

A. There was a good deal that they had claimed that they had done——

Q. I don't want to go into that.

A. And we asked them about the rape business, and he said yes, they done it.

Q. Did he name the names of the men who were with him?
A. Yes, sir.
Q. Will you please state who they were?
A. He said Rufus Buck, and Maomia July, and Sam Sampson, and Lewis Davis.

Q. Do you know the defendants yourself? Can you pick them
43 out? Do you know them to know sufficiently who they are?

A. Yes, sir.
Q. Which is Rufus Buck?
A. There he is, right there, next to Lucky Davis.
Q. Which is Lewis Davis?
A. That third one there.
Q. Which is Maomia July?
A. The fourth one there.
Q. And the other is Sam Sampson, on the end?
A. Yes, sir.

Cross-examination waived. Witness excused.
Government rests.

44 The defendants, to maintain the issues on their part, introduced and examined the following-named witness, RUFUS BUCK, who testified as follows:

45 *Testimony introduced by the defendants.*

RUFUS BUCK, one of the defendants, having been duly sworn in his own behalf, was examined in chief by C. J. Frederick, esq., and testified as follows, to wit:

Question. Your name is Rufus Buck, is it?
Answer. Yes, sir.
Q. You are an Uchee Indian, are you?
A. Yes, sir.
Q. You live in the Creek Nation, do you?
A. Yes, sir.
Q. You understand English. You heard Mrs. and Mr. Hassen and the other witnesses testify about you and the other defendants coming to Hassen's house on the 5th day of August, on Monday, and raping this woman; tell what you know about it—whether that is true or not.
A. I wasn't there. I was with the boys on the third day and on the fourth. We were out close to Okmulgee, and I told the boys I was going down to Concharty after another fellow, and we all rode together and went towards Snake Creek. I told the boys to wait for me on Snake Creek, and so I went.
Q. What boys do you mean?
A. These other four boys here; and when I got to Jim Kelly's house I never seen that fellow. He wasn't there——
Q. Wasn't where?

A. At Jim Kelly's. I staid all night there that night and
46 waited for that man what I was going after, and he never got there. I was there on the 5th, and I never left until the 6th of August, in the evening, about 4 o'clock.

Q. Do you know where this Mr. Hassen lives, this white man?
A. No, sir; I don't.
Q. Was you ever there where he says he lives?
A. No, sir.
Q. He says he lives 20 miles southwest of Sapulpa; you know where that is?
A. Yes, sir; I know where Sapulpa is. I never was at Hassen's.
Q. Were you with these boys at Hassen's on Monday, the 5th?
A. I was there at Concharty on the 5th.
Q. Where were you on the 4th?
A. We were all together, close to Okmulgee.
Q. What place?
A. At Jim Freeman's. I left the boys over there and went on to Concharty. I expect it is about 25 miles from Okmulgee down to Choska.
Q. Were you ever acquainted with Mr. Hassen or any of his folks?
A. No, sir; I never saw him before.
Q. Before when?
A. I never saw him before until to-day. I found the boys on Buck Creek Prairie.
Q. You found who?
A. Those four boys.
Q. When?
A. That was on the 6th day of August, in the evening—well, it was in the night, or late in the evening—after sundown.
Q. Where were you on Monday, the 5th day of August?
A. I was down at Concharty, at Jim Kelly's house.
47 Q. Where is Concharty, or Jim Kelley's?
A. It is close to Choska. I got with the boys, and we all went across Deep Fork, and that was the 6th day of August, at night.

Cross-examination by the ASSISTANT DISTRICT ATTORNEY:

Q. You were with them on Sunday, the 4th?
A. Yes, sir; I was with them on Sunday, in the morning.
Q. What time in the day did you leave them?
A. It was early in the morning.
Q. Where were you when you left them?
A. We all rode together and went towards Snake Creek.
Q. Where was you at the time you left them?
A. I was going to Concharty.
Q. Where were you and they at the time you left them?
A. I don't understand that.
Q. At what place did you leave them?
A. At Jim Freeman's.
Q. Jim Freeman's?
A. Yes, sir.
Q. Where is that?
A. Close to Okmulgee.
Q. How far from Sapulpa?
A. I don't know; it must be about 35 or 40 miles from Sapulpa.
Q. What were you all doing there?
A. We got there to eat breakfast.
Q. Where had you been?

A. I was out on Salt Creek.

48 Q. Where had you and they been?

A. We all was together.

Q. What were you doing together?

A. Riding together.

Q. Riding at what?

A. Horses.

Q. What were you riding together for?

A. To keep out of the way of the marshals.

Q. How long had you been keeping out of the way of the marshals?

A. About two months, I guess.

Q. You had been together two months, had you?

A. No, sir.

Q. How long had you been together?

A. I could not tell you; maybe probably two or three days.

Q. You got with them when? On Tuesday, did you say?

A. I got with them Sunday morning.

Q. You say you got with them Sunday morning?

A. Yes, sir.

Q. Sunday morning after this rape?

A. No; we were together before that. That was on Sunday.

Q. You left them on Sunday morning, and I understood you to say you got with them on Tuesday following?

A. Yes; I got with them Monday evening.

Q. Where?

A. Close to Buck Creek; Buck Creek Prairie. They were in the prairie when I got with them.

Q. How far is that from Mr. Hassen's?

A. I could not tell you; maybe about 7 or 8 miles from there, I guess.

Q. How far is it from Sapulpa?

A. I don't know, sir.

Q. How long did you stay with them after you got with them on Monday evening?

A. I never staid with them no time; they captured us on Tjursday morning.

49 Q. You were all together when you were captured, were you?

A. Yes, sir.

Q. All five of you?

A. Yes, sir.

Q. You resisted, didn't you?

A. I resisted, but not United States——

Q. You tried to kill the marshals, didn't you?

A. No, sir; they were no marshals. They were all Creek Indians.

Q. Indians arresting you?

A. Yes, sir.

Q. You resisted arrest?

A. Yes, sir.

Q. You had a fight, didn't you?

A. Yes, sir.

Q. Anybody killed?

A. No, sir; not as I know of.

Q. There was some shooting done, wasn't there?
A. Oh, yes; quite a good deal of shooting done.
Q. You and all of these other defendants done some shooting?
A. Yes, sir.
Q. What did you do that shooting for?
A. I never knew what they were up to. They run up before I knew——
Q. You say you had been running from marshals for two months?
A. Yes; but I wasn't running from the nation. I was not running from the nation. When I saw the nation running up to me I didn't know what they were up to; they might have been trying to kill me, to mob me.
Q. What would they want to mob you for?
A. I don't know. That is the point of it.
Q. What was it anybody wanted to mob you for?
A. I never knew they were after me until that morning.
50 Q. If you had known they were after you, you would not have been there, would you?
A. No, sir.
Q. You would have been somewhere else?
A. Yes; I never knew they were after me at all.
Q. That was on Thursday?
A. Yes, on Thursday morning about sun——
Q. You left them on Sunday, the 4th, and got with them on Monday evening, the 5th?
A. On the 6th. That was Tuesday.
Q. What time Sunday did you say you left them?
A. It was in the morning early.
Q. You are sure of that?
A. Yes, sir; I am sure of that.
Q. How many men were there in your company there?
A. There were five of us.
Q. You and Lucky Davis, Lewis Davis, Maomia July, and Sam Sampson?
A. Yes, sir.
Q. You were all together Sunday morning?
A. Yes, sir; early Sunday morning.
Q. About what time Sunday morning did you leave them?
A. I left them about 7 or 8 o'clock in the morning.
Q. Did you see them any more that day?
A. No, I never saw the boys any more.
Q. You are sure of that?
A. Yes, sir.
Q. Do you know Mr. McQuirter?
A. No, sir.
Q. You don't know him?
A. No, sir.
Q. Do you know Mr. Callahan, who is here as a witness?
51 A. Yes; I know him.
Q. You saw him in the afternoon, didn't you, on Sunday?
A. No, sir.

Q. Didn't you, in company with these four others, see Mr. Callahan at Mr. McQuirter's house Sunday evening, 4 or 5 o'clock?

A. No, sir.

Q. And wasn't you back of Mr. McQuirter's house about 12 that night?

A. No, sir.

Q. Wasn't you there, and isn't that about 12 miles from Mr. Hassen's?

A. No, sir.

Witness excused.

Defense rests.

52 *Testimony introduced by the Government in rebuttal.*

GEORGE MCQUIRTY, having been duly sworn, was called by the Government in rebuttal, examined in chief by J. B. McDonough, esq., the assistant district attorney, and testified as follows, to wit:

Question. Where do you live?

Answer. About seven miles from Sapulpa, in the Creek Nation.

Q. Do you know Mr. Hassen?

A. Yes, sir.

Q. Do you know Rufus Buck?

A. Yes, sir.

Q. Do you know these other defendants?

A. Yes, sir.

Q. Do you know the day that they are charged with committing rape on Mrs. Hassen—do you re'ember the day?

A. Yes, sir.

Q. Did you see them on the day before?

A. Yes, sir.

Q. What time in the day did you see them?

A. They come to my house I suppose between 12 and 1 o'clock, or about 1 o'clock, I will say, had their dinner there, and staid around there until about 4 o'clock in the evening, or in sight of there.

Q. Was Rufus Buck with them?

A. Yes, sir.

Q. He was along?

A. Yes, sir.

Q. That was about 4 or 5 o'clock Sunday evening?

A. Yes, sir; Sunday evening. They left there something I suppose about 4 o'clock.

Q. Did you see them that night?

A. Yes, sir.

Q. Where?

53 A. They came back close to my house and cut my fence, and went through my pasture, close to the house, that night about midnight.

Q. You knew Buck at that time, did you?

A. Well, I never had had any acquaintance with him before that time.

Q. You knew him when you saw him?

A. Yes, sir.

Q. How many men were there along?

A. Five men.

Q. How far is that from Mr. Hassen's?

A. Well, I could not tell exactly the distance. I would really have to kind of estimate it. I would suppose it would be about 12 miles.

The COURT. Which of these defendants is the man you know as Buck?

The WITNESS. That one sitting on the left next to the nigger.

The COURT. Next to the colored man there?

The WITNESS. Yes, sir.

The COURT. That is the man you saw with the other four men at the time you mention?

The WITNESS. Yes, sir.

Cross-examination waived. Witness excused.

54 BENTON CALLAHAN, having been duly sworn upon behalf of the Government, was examined in chief in rebuttal by J. B. McDonough, esq., the assistant district attorney, and testified as follows, to wit:

Question. Your name is Callahan?

Answer. Yes, sir.

Q. What is your first name?

A. Benton.

Q. Where do you live?

A. About 30 miles east of Okmulgee.

Q. Do you know Mr. McQuirty?

A. Yes, sir.

Q. Do you know Rufus Buck?

A. I know him now.

Q. Did you see him, with these other defendants, on Sunday before the alleged rape of Mrs. Hassen?

A. Yes, sir.

Q. Where did you see him?

A. In front of Mr. McQuirty's house.

Q. What time in the day did you see him?

A. Between four and five o'clock in the evening.

Q. Do you know how far that is from Mr. Hassen's?

A. No, sir.

Q. How many men were there?

A. Five of them.

Q. Did you recognize any of the others?

A. I knew one of them.

Q. Which one?

A. Sammy Sampson.

Q. Did you see them any more?

55 A. No, sir; not until after they were captured.

Q. Which one is Sam Sampson?

A. That one that has got that scar on his chin.

Q. Which is Rufus Buck?

A. That one right there next to Lucky Davis.

Q. The one next to the colored man?

A. Yes, sir.

Witness excused. Cross-examination waived.

Testimony closed.

56 The court then instructed the jury as follows:

57 Gentlemen, the defendants in this case, Rufus Buck, Lewis Davis, Lucky Davis, Sam Sampson, and Maomia July, are charged by an indictment found by a grand jury of this court with the crime of rape. It is alleged upon the 6th of August, 1895, at the Creek Nation, in the Indian country, in and upon Rosetta Hassen, a white woman and not an Indian; that they feloniously, forcibly, and violently an assault did make, and her, the said Rosetta Hassen, then and there, against her will, forcibly, violently, and feloniously did ravish and carnally know. That is a crime under the law of the United States, and it is for you to say in this case, first, whether the crime, as charged, has been committed. I remark to you, in this connection, that this indictment is drawn upon the theory that one committed the rape actually and really, and that the others were present actually or constructively aiding, abetting, and assisting him in its commission. While he may have actually committed the rape, if one did commit it, all who are present

58 actually or constructively and willfully and knowingly aid or assist him, are guilty of that rape. It would be the rape of all of them. They would be guilty of that as well as of the rape that each may have actually committed. The charge that each of the five actually committed the rape are covered by another series of indictments, but this one is drawn upon the theory that one committed the rape, as I have told you, and that the others were willfully present aiding and abetting in its commission. That would make them principals and make them responsible.

Now, you are called upon to see if this crime, as I have told you, was committed. Before you can see this you must first know what the crime is. It is like all other violations of the rights of men which are known as public offenses or crimes, in that it is defined by the law. This crime, the law says, is the unlawful carnal knowledge of a woman by force and against her will. Now, to make out this crime in the law, this definition must be filled to the full measure; but that we may the better understand the meaning of this definition let us see what are the requirements of it. First, there must be carnal knowledge; that is, there must be penetration of the private parts of the male to some extent into the private parts of the female, or of the female organ of the female. Some degree of entrance must be shown. Full penetration need not be shown. Penetration for any distance from the exterior or outer surface of the female organ is sufficient in the law to make carnal knowledge of the female. This carnal knowledge of the female must be against the will of the woman; that is, without her consent. If she consents to the act there is no carnal knowledge known in the law as rape, unless the party of whom the carnal knowledge is had is without will power either by nature, such as an idiot or a lunatic, who at the time of the doing of the act has not mind enough to comprehend the nature of the act, or by reason of

59 narcotics or some drugs or medicines being administered, the will has been permanently or temporarily taken away; or, in the case of young children, who are unconscious of the nature of the act. Now, we see, it must be against the will of the woman. That is a proposition which requires some modification, because it might be misunderstood, and in order to give you to understand when it is against her will, we

say to you that if that will is overcome by force so that from fear of violence to her, or fear of death to her, she should consent to have carnal knowledge with parties who treat her in this way, that would be a deprivation of will power that would not take away the offense. One of the elements of this crime is that it is done by force or against the will of the woman upon *upon* it is committed. Now, it is necessary to see what is meant by its being done by force, and I read to you from section 211 of Greenleaf on Evidence, defining that proposition:

"The allegation of force and the absence of previous consent is proved by any competent evidence, showing that either the person of the woman was violated and her resistance overcome by physical force or that her will was overcome by fear of death or by duress. In either case the crime is complete, though she ceased all resistance before the act itself was finally consummated. And if she was taken at first with her own consent, but was afterwards forced, against her will; or was first violated, and afterwards forgave the ravisher and consented to the act; or if she was his concubine, or a common strumpet—still the particular offence in question being committed by force and against her will at the time of its commission, this crime is in legal estimation completed."

Now, that is what is meant by the allegation that it was committed by force. As I have already told you, it must be committed by force.
60 Force incident to penetration is sufficient to satisfy that requisite of the law.

Now, then, it is for you to see in this case whether this condition exists as having been actually committed by one of these parties—any one of them—and while it was being committed whether or not the others were present at the place of the commission of the offense, actually or constructively, as I shall define these terms, and while he was engaged in actually committing the crime of rape upon this lady they were present, willfully and intentionally aiding, abetting, or assisting him in its commission, because you will understand under the law that that status as affecting a man makes him just as guilty of the crime as though he had committed it himself. Now, the law has been declared very explicitly upon that subject in a case where one party was indicted for being what is called the principal of one who actually committed the rape, and another party for being present, aiding and abetting him in its commission—the case of Strang v. The People, 24 Mich., 1, where Mr. Justice Cooley said:

"All persons aiding and assisting in the commission of a rape are principals in the second degree."

Now, under the law of the United States, for a crime like this, or any other crime by which a man becomes guilty because he is a principal in the second degree, it is just the same as though he was a principal in the first degree; it is a provision of the law which says that if a man actually with his own hand does an act that it is a crime that makes him a principal in the first degree; but if he is so related to it as to be in the law present, willfully and intentionally aiding and abetting its commission, he is then regarded as a principal in the second degree, but having the same degree of guilt as though he was a principal in the first degree.

61 "As such, a husband may be indicted for the aiding and assisting in the ravishment of his wife." And it is a singular fact, too, or one that appears singular on the face of it, that a woman may in this way become guilty of a rape. There was a case decided in North Carolina where a woman was convicted for aiding and abetting in an assault to ravish because she was present at the place where it was committed and aided and assisted the party who committed it, "as in the case of Lord Audley and Castlehaven, of which an account is given in the third volume of the State trials. And a woman or a boy under the age of fourteen may be so indicted. But it was never necessary to discriminate between principals in the first and those in the second degree in the indictment, provided the punishment was the same, and the guilty act was one which admitted of participation. And in rape all present and participating in the offense were regarded as ravishers. Thus, it is said in Russel, that 'the indictment against aiders and abettors may lay the fact to have been done by all,'" just as it is laid here as having been done by all, on the theory that the rest of them were present aiding and abetting in the commission of it by one or the other; "'or may charge it as having been done by one and abetted by the rest. Thus, where upon an appeal against several persons for ravishing the appellant's wife, an objection was taken that one only should have been charged as ravishing, and the others as accessories, or that there should have been several appeals, as the ravishing by one would not be the ravishing of the others. It was answered that if two come to ravish and one by comfort of the other does the act, both are prin-
62 cipals, and the case proceeded. And in a modern case the form of the indictment in a charge of this kind came under the consideration of the judges. The indictment was against three persons for a rape, charging them all as principals in the first degree that they ravished and carnally knew the woman, and the prisoners were all found guilty. The judge who tried them doubted whether the charge could be supported, and at his desire the case was mentioned by Heath, J., to the other judges, and all who were present agreed that the charge was valid, though the form was not to be recommended; but they gave no regular opinion because the case was not regularly before them. In Rex v. Gray and Wise, Coleridge, J., sustained an indictment which in one count charged Gray as principal in the first degree in a rape, and Wise as present, aiding, and abetting, and in another charged Wise as the principal in the first degree and Gray as aiding and abetting. In Rex v. Crisham, the defendant was indicted alone as having aided and assisted in a rape in which one McDonough was principal in the first degree. After conviction it was moved in arrest that the indictment should have charged the prisoner as principal, and stated that he as well as McDonough ravished the prosecutrix. Folkes's Case was cited, in which an indictment charging the prisoner both as principal in the first degree and as aiding and abetting other men in committing a rape was held after conviction to be valid on the count charging him as principal. Rolfe, B., said to counsel: "Is not the prisoner so charged (i. e., as principal) in the indictment? It alleges that McDonough committed a rape and the prisoner aided and assisted him. Is not that another way of saying that the prisoner committed a rape?" and Maule, J., said: "There does not appear to me to be

any ground for the objection. "It has already been decided that in a
63 case of this description the party may be charged according to the fact, or indicted as principal in the first degree," referring to the case of Rex v. Gray and Wise, supra.

Now, in this case in North Carolina it was held that even a woman, as I have told you, may be convicted of an attempt to rape, of being present, aiding, and abetting in its commission; and that she may be convicted of rape for doing something by her action either by aiding or assisting the man who actually commits the rape.

Now, it is necessary in this connection, because you have had the evidence bearing upon the proposition of the relation of these parties to this transaction, to tell you when a man is present, aiding, and abetting and assisting in the commission of a crime. If he is actually at the place of the crime, at the place where it is committed, and while so situated with reference to the place of its commission he willfully and voluntary aids or assists or abets that crime by anything that may contribute to the result, such as by guarding parties by acts of threatened violence to prevent interruption. You take the case, for example, as put here. Here is the husband, the mother, and the young man, what would be the natural inference to be found by an intelligent jury as to what their conduct would have been to protect this innocent woman if they had been free to act? They would have interrupted this crime in its commission. They would have taken some steps to have prevented it by the use of force, as they would have had the right to have done, if necessary, to prevent it in that way. Now, the question is whether or not at that time when one of these parties took the woman down behind this barn below this corral, the
64 others were at the place described holding in check the other members of the family, and preventing interruption by the husband to protect the wife, and by the young man—whether the others were there doing acts of violence, whether or not that was not an act that aided and assisted and abetted the party who was actually doing the act. If so, all who were so connected with it in that way would be responsible, because the act of the party who was the actual and real ravisher would be the act of all under such circumstances. And the reason of that is manifest. The probability is strong that if it had not been for that act that the crime would not have occurred—I mean the act of preventing interruption.

Now, there are two kinds of presence in the law. If the parties are at the place of the crime, and while there are actually wilfully aiding in its commission by anything that would contribute to the result, then it is their crime; it is the crime of all who are related to it. If they are at that place for that purpose, for the purpose of willfully and understandingly or knowingly aiding and assisting and abetting in the commission of the crime, the fact that they are there for that purpose if called upon, or if it becomes necessary, puts them, first, at the place of the crime, and it so connects them with the act as that they are responsible for it though they may be doing nothing except to go to the place prompted by that desire or by that purpose.

Now, we come to another condition where parties are not actually and really at the place of the crime, but in contemplation of law they are at that place. That is called constructive presence. That is a relative

expression; that is, it depends upon the circumstances of each case. What might be constructive presence in one case would not be in another.

65 The test always is, when the jury come to pass upon the question as to whether there was constructive presence or not at the place of the crime, were they so near to the place where it was actually committed as to be able in any way to willfully and understandingly assist in its commission, or to aid or abet those who are committing the crime. If they are so situated with reference to the place of the crime as that they can do that, then they are present in legal contemplation at the place of the crime. If they are there, and while so situated with reference to the place of the crime, so actually engaged voluntarily and willfully in rendering assistance by some act of violence, as in this case; if they while one was engaged in doing this act, in committing this outrage upon the woman, they were holding in check the husband and the mother and the young man—they were guarding them with guns, holding them in check to prevent interruption—they would be, if that was the case, present in the law; there would be a presence at the place of the rape, at the place of the crime; and in the eye of the law there would be assistance, there would be aid, there would be abetting, committed or done by all those who were thus situated and who were thus acting with reference to these parties at the time that this crime was being committed. That would be constructive presence. If they held them up in the yard, and if they were the distance of this room, or 100 yards, or about that distance away, one of them actually committing the crime, that would be constructive presence. A case of that character, as I have already told you, would be the doing of acts that in the judgment of the law would directly and manifestly aid and contribute to the criminal result. The law says that if that is the condition proven by the testimony, that makes each and every one responsible for the actual act of ravishment committed by the other.

66 The law again says that if parties are so situated with reference to the place of the crime; that is, constructively present at it, so near at it as to be able in some way to aid or assist or abet its commission, and they are there for that purpose, understanding the condition that is about to transpire or is transpiring, though they may do nothing actually and really that contributes to the result, but if they are constructively present for the purpose of doing it, the law says that they are present at the place of the crime and are responsible for whatever transpires. It then becomes the crime of all—of each and every one.

I was going to read to you some declarations of the law, which I have often read to this jury this term, upon the doctrine of presence, actual or constructive, but I think I have made the proposition sufficiently plain that you may understand it.

You are to see what the relation of these parties was to this transaction. If you are satisfied that one of them committed this act, as charged in this indictment, and satisfied of it beyond a reasonable doubt, and while he was so committing it the others were up in the yard, as described by the witness, holding in check the husband and father and the young man, for the purpose of preventing interruption that the other might consummate the crime—might carry out his wicked design—then they would all be responsible under this indictment for his act. His act would be the act

of all. And every time one of them committed an act of that kind they were all responsible and all participants in it, and all would be guilty of each separate act of ravishment.

Now, there is a matter that it is necessary to remind you of at this point. If a number of persons enter into the commission of a crime, or they are jointly engaged in its commission in one of these ways I have named, they enter into it because as a matter of course there is an understanding among them that they will commit that criminal act—
67 that may be entered into by so many words, or it may be entered into tacitly—that is the very seed of a crime which is committed by more than one. It is the source from which this criminal germ springs. It grows out of what is called a conspiracy—an undertaking to do an unlawful act entered into by a number of persons because they expressly agree to enter into it, or because some of them may know the purposes of one and they all understandingly agree to assist him in its commission in some way that will contribute to the criminal result—from the time that they thus join the unlawful undertaking until it is consummated, if they continue in it so long, they are responsible for the words and declarations of each of the coconspirators. Whatever curses or denunciation or words of abuse as indicative of a will or an intention may have been uttered by one of the conspirators are in legal contemplation so uttered by the mouth of all—they come out of the mouth of all. Whatever act was done looking to the consummation of the purpose to rape during the existence of that unlawful combination was the act of all. They are all responsible for it. Of course, after that crime is over and after it is completed, it is my duty to admonish you that the admissions or statements of one would only be binding upon him unless made in the presence of the other. Then they are only admitted for the purpose of showing the conduct of the others in the presence of a declaration that may be accusatory as affecting them. That is the status of evidence of that kind coming as an admission from one of the alleged conspirators after the execution of the conspiracy. But, I repeat, during its pendency—while it is being executed—each and every one is responsible for what is said and done by the others in furtherance of the crime. It is the act of all until it is consummated—until the crime is completed.

Now, gentlemen, I think I have given you all the law involved
68 in this case. You take the evidence in this case; you have heard the statements of these witnesses, and you are to consider their means of knowing the facts they detailed to you, the way they applied those means, and their ability to remember the facts as they occurred; the consistency and reasonableness and probability of their statements in their own light and in the light of the statements of other witnesses that may be truthful or as statements that may be accredited as being true. If they have the characteristics of plausibility or probability, of naturalness, and of that which is real and that which is reasonable, in your judgment, they have the characteristics of truth attached to them, you would be warranted in believing their statements. You are to see what these statem'nts establish. You are to see what relation they show as existing between these five defendants at that time; what was the attitude and conduct of each and every one of them. All of these matters are to be taken into account to see, first, whether a crime was committed by one

of the parties actually and really, and then whether the others were participants in it, and whether they have been identified by these witnesses as being those who did participate in it.

The law says that you judge of the credibility of the witnesses by means of the application of these rules I have given you, and you take into consideration other things also in doing this. You take into consideration the interest that a witness has in the result of the case, how that witness is to be affected by the result of the case. Now, that of course does not apply to witnesses who come here under the process of the law to tell of violations of the law, because the law requires them to tell that, and that can not be considered as putting the witness in such an attitude as having an undue relation to the case, or as giving them such an
69 interest as that you could consider that condition as affecting their testimony. When you come to a defendant such as Rufus Buck in this case, who went upon the stand, he can go upon the stand or not just as he pleases; if he goes upon the stand the law says he is subject to the same rules as any other witness as far as it is your duty to look at the credibility of his evidence, you look at it in the light of its reasonableness when viewed by itself, and above all when viewed in conjunction with the other testimony in the case. If the other testimony contradicts what he says, if that other evidence comes from witnesses who are apparently truthful, under these rules I have given you, because their statements are consistent, probable, natural, and reasonable, and his testimony, coming from the source it comes from, a man charged with a crime, a crime that takes his life if he is found guilty, is coming from an interested source as a matter of course. The law says for that reason alone you can not set aside his evidence, but in judging of its credibility you consider simply that circumstance in the case. That is the way you view that; that is the way you are to judge of evidence of that kind. In this case the other defendants did not go upon the state. They need not go unless they want to. The fact that they did not of course is not to be taken as a presumption against them, but you are to find out the merits of the case upon the other evidence aside from any presumption that you would be authorized to draw because of their absence from the witness stand, for you can not draw any from such fact.

Now, gentlemen, I say in conclusion to you, if you are satisfied under the law I have given you, and by the light of these facts as they have gone to you, that these defendants are guilty of this crime as charged, and you are convinced of that beyond a reasonable doubt,
70 your duty would be to sign this blank form of verdict which says that we, the jury, find the defendants, Rufus Buck, Lewis Davism, Lucky Davis, Sam Sampson, and Maomia July, guilty of rape as charged in this indictment, and sign it by one of your number as foreman, and return that verdict into court. If you are not satisfied of this state of case as affecting these defendants, or all of them, beyond a reasonable doubt, your duty would be to acquit them, because the law says before you can find guilt in any case you must be satisfied beyond a reasonable doubt. Now, there is no mystery about that. Sometimes it is believed that there is some hidden mystery on that proposition. There is nothing of the kind. All are presumed innocent until proven guilty. The law has a source for all of its rules, and the source from which it gets this

rule that requires proof beyond a reasonable doubt is from that which is the conduct and actions of men of reason and judgment, and who are men of impartial minds as citizens. You are put in the position where the law says if you had this case brought to you as twelve citizens, and you had heard all of this evidence, you had heard the witnesses making their statements—you will bear in mind that as such citizens there rests upon you certain duties—if you were convinced to such an extent that you believed you should take action upon that conviction as citizens, your duty would be to seek to arrest the parties in the first instance, and to do whatever was necessary to bring them to justice, to bring them to a court where they could be tried. Now, if that state of case exists, supposing it did exist, supposing that all these facts had been detailed, and the court had given to you the law telling you what this crime was, and how a number of parties might be related to a criminal transaction so as to be responsible for it—if when that state of case was brought
71 before you as citizens you were satisfied that they were guilty, so satisfied that you have an abiding conviction in your minds to a moral certainty that the charge was established, and that you would therefore first believe it and then act upon it, then your minds are satisfied beyond a reasonable doubt, because the law contemplates that a reasonable man would not act as long as his mind was in a condition where the conclusion that he was seeking to arrive at was confronted by a doubt for which a good reason could be given; but if doubts, all doubts for which good reason can be given, are removed from the case, then there is no longer any doubt in it which can be considered or regarded by the jury, and that would be a condition where the case would be established beyond reasonable doubt.

Gentlemen, you will take the indictment and make up your verdict.

72 The jury returned the following verdict:

"We, the jury, find the defendants Rufus Buck, Lewis Davis, Luckey Davis, Sam Sampson, and Maoma July guilty of rape as charged in the within indictment."

(Signed) JOHN N. FERGUSON, *Foreman.*

The defendants tender this their bill of exceptions and pray that the same be signed by the judge and made a part of the record in this case, which is accordingly done.

I. C. PARKER,
U. S. Dist. Judge, holding Circuit Court.

(Endorsed on back:) Filed Oct. 26, 1895. S. Wheeler, clerk. By I. M. Dodge, D. C.

73 *Assignment of errors.*

The circuit court of the United States for the western district of Arkansas, August term, A. D. 1895.

UNITED STATES
vs.
RUFUS BUCK, LEWIS DAVIS, LUCKEY DAVIS, SAM Sampson, Maoma July.

The defendants file this their assignment of errors in said cause, as follows:

1st. It is error that the record does not show that they, being in custody, were present in court at the time of the empaneling of the grand jury that returned the indictment against them.

2nd. It is error that the record does not show that the defendants, being in custody, were present in court at the time the indictment was returned against them.

3rd. It was error for the court to charge the jury as follows:

"Now under the law of the United States for a crime like this, or any other crime by which a man becomes guilty because he is a principal in the second degree, it is just the same as though he was a principal in the first degree; it is a provision of the law which says that if a man actually, with his own mind, does an act that is a crime, that makes him a principal in the first degree, but if he is so related to it as to be in the law present, wilfully and intentionally aiding and abetting its commission, he is then regarded as a principal in the second degree, but having the same degree of guilt as though he was a principal in the first degree."

4th. It was error for the court to charge the jury as follows:

74 "Now, there is a matter that it is necessary to remind you of at this point. If a number of persons enter into the commission of a crime, or they are jointly engaged in its commission in one of these ways I have named, they enter into it because, as a matter of course, there is this understanding among them that they will commit that criminal act—that may be entered into by so many words, or it may be entered into tacitly—that is the very secret of a crime which is committed by more than one; it is the source from which this criminal germ springs; it grows out of what is called a conspiracy, an undertaking to do an unlawful act entered into by a number of persons because they expressly agree to enter into it, or because some of them may know the purposes of one and they all understandingly agree to assist him in its commission in some way that will contribute to the criminal result—from the time that they thus join the unlawful undertaking until it is consummated, if they continue in it so long, they are responsible for the words and declarations of each of the co-conspirators. Whatever curses or denunciation or words of abuse as indicative of a will or an intention may have been uttered by one of the conspirators are in legal contemplation so uttered by the mouth of all, they come out of the mouth of all. Whatever act was done looking to the consummation of the purpose to rape during the existence of that unlawful combination was the act of all; they are all responsible for it. Of course, after that crime is over and after it is completed it is my duty

to admonish you that the admissions or statements of one would only be binding upon him unless made in the presence of the other. Then they are only admitted for the purpose of showing the conduct of the others in the presence of a declaration that may be accusatory as affecting them. That is the status of evidence of that kind coming as an admission from one of the alleged conspirators after the execution of the conspiracy, but, I repeat, during its pendency, while it is being executed, each and every one is responsible for what is said and done by the others in furtherance of the crime. It is the act of all until it is consummated, until the crime is completed."

75 5th. It was error for the court to charge the jury as follows:

"The law says that you judge of the credibility of the witnesses by means of the application of these rules I have given you, and you take into consideration other things also in doing this. You take into consideration the interest that a witness has in the result of the case—how that witness is to be affected by the result of the case. Now, that of course does not apply to witnesses who come here under the process of the law to tell of violations of the law, because the law requires them to tell that, and that can not be considered as putting the witness in such an attitude as having an undue relation to the case, or as giving them such an interest as that you could consider that condition as affecting their testimony. When you come to a defendant, such as Rufus Buck in this case, who went upon the stand—he *he* can go upon the stand or not just as he pleases—if he goes upon the stand the law says he is subject to the same rules as any other witness, as it is your duty to look at the credibility of his evidence. You look at it in the light of its reasonableness when viewed by itself, and above all when viewed in conjunction with the other testimony in the case. If the other testimony contradicts what he says, if that other evidence comes from witnesses who are apparently truthful, under these rules I have given you, because their statements are consistent, probable, natural, and reasonable, and his testimony coming from the source it comes from—a man charged with a crime—a crime that takes his life if he is found guilty—is coming from an interested source as a matter of course. The law says for that reason alone you can not set aside his evidence, but in judging of its credibility you consider simply that circumstance in the case. That is the way you view it. That is the way you are to judge of the evidence of that kind. In this case the other defendants did not go upon the stand. They need not go unless they want to. The fact that they did not of course is not to be taken as a presumption against them, but you are to find out the merits of the case upon the other evidence aside from any presumption that you would be authorized to draw from their absence from the witness stand, for you can not draw any from such fact."

76 6th. It was error for the court to charge the jury as follows:

"The charge that each of the five actually committed the rape is covered by another series of indictments, but this one is drawn upon the theory that one committed rape, as I have told you, and that the others were wilfully present aiding and abetting in its commission. That would make them principals as to the rape committed; you can make them responsible."

7th. It was error of the court to sentence the defendants to be executed before the expiration of the term of court at which they were convicted.

Wherefore, the above-stated errors considered, the said defendants pray that the judgment and sentence against them be reversed and a new trial be granted them.

RUFUS BUCK.
LEWIS DAVIS.
LUCKEY DAVIS.
SAM SAMPSON.
MAOMA JULY.
By THOMAS BOLES and C. J. FREDERICK,
Their Attys.
BYERS & MAYER, *Their Attys.*

(Endorsed on back:) Filed Oct. 26, 1895. S. Wheeler, clerk. By I. M. Dodge, D. C.

77 *Petition for writ of error.*

United States circuit court for the western district of Arkansas.

UNITED STATES
vs.
RUFUS BUCK, LEWIS DAVIS, LUCKEY DAVIS, SAM SAMPSON, MAOMA JULY.

To the Clerk of the Circuit Court of the United States for the Western District of Arkansas:

Your petitioners, Rufus Buck, Lewis Davis, Luckey Davis, Sam Sampson, and Maoma July, represent that at the August term, 1895, of said court they were convicted on an indictment charging them with the crime of rape, and that the said court has pronounced judgment and sentence of death upon these petitioners upon the verdict of the jury convicting them as aforesaid. Your petitioners allege that in the record and proceedings in the trial of said cause there is great and manifest error, to the prejudice and great damage of your petitioners. They therefore pray that a writ of error from the Supreme Court of the United States be issued by you under the seal of said circuit court in said cause, removing said cause and the record therein to the said Supreme Court, in order that the same may be there examined; and if error be found, that the judgment and sentence against them therein may be reversed.

RUFUS BUCK.
LEWIS DAVIS.
LUCKEY DAVIS.
SAM SAMPSON.
MAOMA JULY.
By THOMAS BOLES & C. J. FREDERICK,
Their Attorneys.
BYERS & MAYER, *Their Attorneys.*

(Endorsed on back:) Filed Oct. 26, 1895. S. Wheeler, clerk. By I. M. Dodge, D. C.

78 *Poverty affidavit.*

United States circuit court for the western district of Arkansas.

UNITED STATES
vs.
RUFUS BUCK, LEWIS DAVIS, LUCKEY DAVIS, SAM SAMPSON, and MAOMA JULY.

We, Rufus Buck, Lewis Davis, Luckey Davis, Sam Sampson, and Maoma July, the defendants in the above-stated cause, do solemnly swear that we are not possessed of sufficient means, and are actually not able to procure the same, to prosecute the appeal taken in said cause in the Supreme Court of the United States.

We therefore pray that it be prosecuted in forma pauperis.

RUFUS BUCK,
LUCKEY DAVIS,
LOUIS DAVIS,
SAM SAMPSON,
MAOMA JULY.

Subscribed and sworn to before me this 26th day of October, 1895.

STEPHEN WHEELER, *Clerk.*
By J. D. BERRY, *D. C.*

(Endorsed on back:) Filed Oct. 26, 1895. Stephen Wheeler, clerk. By I. M. Dodge, D. C.

79 UNITED STATES OF AMERICA, *ss:*

The President of the United States to the honorable the judges of the circuit court of the U. S. for the western district of Arkansas, greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said circuit court before you, or some of you, between the United States, plaintiff, and Rufus Buck, Lewis Davis, Lucky Davis, Sam Sampson, Maoma July, defendants, a manifest error hath happened to the great damage of the said Rufus Buck, Lewis Davis, Lucky Davis, Sam Sampson, and Maoma July, as by their complaint appears, we being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same in the said Supreme Court at Washington within 60 days from the date hereof, that the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error, what of right, and according to the laws and customs of the United States should be done.

Witness the Honorable Melville W. Fuller, Chief Justice of the United States, the 28th day of October, in the year of our Lord one thousand eight hundred and ninety-five.

STEPHEN WHEELER,
Clerk of the Circuit Court of the United States
for the Western Dist. of Ark.
By I. M. DODGE, *D. C.*

Allowed by—

Justice of the Supreme Court of the United States.

80 UNITED STATES OF AMERICA, *ss:*

To Jas. T. Read, esq., U. S. atty. for the western district of Arkansas, greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, at Washington, within 60 days from the date hereof, pursuant to a writ of error, filed in the clerk's office of the circuit court of the U. S. for the western dist. of Arkansas, wherein Rufus Buck, Lewis Davis, Lucky Davis, Sam Sampson, and Maoma July are plaintiffs in error, and you are defendant in error, to show cause, if any there be, why the judgments rendered against the said plaintiff in error as in the said writ of error mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable I. C. Parker, U. S. dist. judge for the western dist. of Ark., holding circuit court this 28 day of October, in the year of our Lord one thousand eight hundred and ninety-five.

I. C. PARKER,
U. S. Dist. Judge holding Circuit Ct.

81 On this day of , in the year of our Lord one thousand eight hundred and ninety- , personally appeared before me, the subscriber, and makes oath that he delivered a true copy of the within citation to .

Sworn to and subscribed the day of , A. D. 189 .

OCT. 28, 1895.

I hereby accept service of the within citation and waive service by an officer.

EDGAR SMITH,
Asst. U. S. Atty.

82 UNITED STATES OF AMERICA,
Western District of Arkansas:

I, Stephen Wheeler, clerk of the circuit court of the United States for the western district of Arkansas, in the eighth circuit, hereby certify that the foregoing transcript annexed to this certificate is a true and complete copy of the record and proceedings in the case of U. S. vs. Rufus Buck et al., the original of which remains of record in my office.

In testimony whereof I hereunto set my hand and affix the seal of said court, at Fort Smith, in said district, this 28 day of October, A. D. 1895.

[SEAL.]

S. WHEELER, *Clerk.*
By I. M. DODGE, *D. C.*

(Indorsement on cover:) Case No. 16082. Term No., 792. Rufus Buck, Lewis Davis, Lucky Davis, Sam Sampson, and Maoma July, plaintiffs in error, vs. The United States. (Rape.) W. Arkansas, C. C. U. S. Filed November 6th, 1895.

Office Supreme Court U. S.
FILED.
DEC 23 1895
JAMES H. MCKENNEY,
CLERK.

In the Supreme Court of the United States.

OCTOBER TERM, 1895.

RUFUS BUCK, LEWIS DAVIS, LUCKY DAVIS, Sam Sampson, and Maoma July, plaintiffs in error,
v.
THE UNITED STATES.
No. 792.

MOTION TO ADVANCE.

In the Supreme Court of the United States.

OCTOBER TERM, 1895.

RUFUS BUCK, LEWIS DAVIS, LUCKY DAVIS, Sam Sampson, and Maoma July, plaintiffs in error,
v.
THE UNITED STATES.
No. 792.

MOTION TO ADVANCE.

The plaintiffs in error were indicted at the May term, 1895, in the circuit court of the United States for the western district of Arkansas, charged with having committed rape on August 6, 1895, at the Creek Nation, in the Indian country. They were tried and found guilty on September 25, and sentenced to be hanged.

The Solicitor-General respectfully moves the court to advance the case on the docket for hearing on such day during the present term as may be convenient to the court.

Notice of this motion has been served on the plaintiffs in error and proof of service filed with the clerk.

HOLMES CONRAD,
Solicitor-General.

8004

Office Supreme Court U. S.
FILED.
FEB 27 1896
JAMES H. McKENNEY,
CLERK.

In the Supreme Court of the United States.

OCTOBER TERM, 1895.

RUFUS BUCK, LEWIS DAVIS, LUCKY Davis, Sam Sampson, and Maoma July, plaintiffs in error,
v.
THE UNITED STATES.
No. 792.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE WESTERN DISTRICT OF ARKANSAS.

BRIEF FOR THE UNITED STATES.

In the Supreme Court of the United States.

OCTOBER TERM, 1895.

RUFUS BUCK, LEWIS DAVIS, LUCKY Davis, Sam Sampson, and Maoma July, plaintiffs in error, v. THE UNITED STATES. } No. 792.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE WESTERN DISTRICT OF ARKANSAS.

BRIEF FOR THE UNITED STATES.

STATEMENT.

The defendants were indicted for raping a white woman and not an Indian at the Creek Nation, within the western district of Arkansas, convicted, and sentenced to be hanged.

The testimony, which is set out in full, established their guilt in the fullest manner.

The rape was committed by each of the defendants on Mrs. Hassen, all of them aiding and abetting each other.

The evidence establishes that the crime was committed with the utmost ruffianism and barbarity, the defendants having taken the woman forcibly from the presence of her mother and children, firing off their guns and threatening their lives.

None of the defendants testified but one, Rufus Buck (Rec., p. 24), and he undertook to establish an alibi for himself.

There was no other testimony introduced for the defendants.

POINTS AND ARGUMENT.

I.

The first assignment of error is as follows:

> It is error that the record does not show that they, being in custody, were present in court at the time of the impaneling of the grand jury that returned the indictment against them. (Rec., p. 38.)

This assignment does not call for serious comment.

II.

The second assignment is as follows:

> It is error that the record does not show that the defendants, being in custody, were present in court at the time the indictment was returned against them. (Rec., p. 38.)

This assignment is on the same plane as the first one.

III.

The third, fourth, fifth, and sixth assignments are predicated upon alleged errors in the charge, which are set out on pages 38 and 39 of the record.

There was no exception of any character made at any time to the charge, and therefore there is nothing to sustain this assignment. (*Holder* v. *United States*, 150 U. S., 91; *Tucker* v. *United States*, 151 U. S., 164.)

VII.

The seventh assignment is as follows:

> It was error of the court to sentence the defendants to be executed before the expiration of the term of court at which they were convicted. (Rec., p. 40.)

There is no exception upon which this assignment is based in the record.

It is useless now to inquire whether or not there was error, for the appeal has carried the execution of the sentence beyond the term of the court at which the defendants were convicted.

J. M. DICKINSON,
Assistant Attorney-General.